

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

GATX Rail
20878 West Slover Avenue
Colton, California 92324

CAD055698815

Respondent.

Docket HWCA 2005-0770

STIPULATION AND ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and GATX Rail (Respondent) enter into this Stipulation and Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles, and stores hazardous waste at the following site: 20878 West Slover Avenue, Colton, California (Site).

1.3. Inspection. The Department inspected the Site on March 29, 2005.

1.4. Authorization Status. Respondent is a hazardous waste generator and is currently implementing an approved closure plan for its hazardous waste storage area.

1.5. Jurisdiction. Health and Safety Code section 25187, authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

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1.6. Hearing. Respondent waives any right to a hearing in this matter.

1.7. Full Settlement. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

2. VIOLATIONS

2.1. Enforcement Order. On October 28, 2005, the Department issued an Enforcement Order to Respondent, a true and correct copy of said Enforcement Order is attached hereto as Attachment A, and is incorporated herein by this reference.

2.2. Dispute. A dispute exists regarding the violations alleged in the Enforcement Order. The parties wish to avoid the expense of litigation and to ensure prompt compliance with the statutes and/or regulations cited herein.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1. Within sixty days of the effective date of this Order, Respondent shall submit to the Department a written plan (Plan) for the management of all waste paints. (For the purposes of this Order and the Plan, waste paint shall mean any and all paint that has passed its expiration date or otherwise exceeded its manufacturer's recommended shelf life.) The Plan shall ensure compliance with the requirements of

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the California Health and Safety Code and the California Code of Regulations, Title 22, Division 4.5, including but not limited to Chapters 11 and 12.

3.1.2. Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 5 (Penalty) below.

3.2. Submittals. All submittals from Respondent pursuant to this Order shall be sent to:

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division, Cypress Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may otherwise be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

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a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) creates an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this paragraph shall be extended for the term of such Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Enforcement Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California nor the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

3.10. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

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4. OTHER PROVISIONS

4.1. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188, and other applicable provisions of law.

4.2. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.3. Integration. This Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except by a writing duly executed by the Department and specifically referencing this document by title and docket number, or as otherwise provided in this Order.

4.4. Privileges. Nothing in this Order shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

5. PENALTY

5.1. Respondent shall pay the Department the total sum of \$10,000, which includes \$5,000 as reimbursement of the Department's costs incurred in connection with this matter.

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5.2. Payment in the amount of \$10,000 is due within 30 days from the effective date of this Order.

5.3. Respondent's check shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Carmelita E. Lampino, Unit Chief
Statewide Compliance Division, Cypress Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1, and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

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6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the Department.

Dated: February 16, 2006

Original signed by William J. Groos
William J. Gross, Senior Vice President
GATX Rail
Respondent

Dated: February 17, 2006

Original signed by Carmelita E. Lampino
Carmelita E. Lampino, Unit Chief
Statewide Compliance Division
Cypress Branch
Department of Toxic Substances Control

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